

## **REMARKS**

Upon entry of this Amendment, Claims 73-86 and 88-90 will remain pending in the case.

### **Claim Objections**

Paragraphs 2-3 of the Office Action object to Claims 7, 11 and 65 for the reasons stated. Applicants believe the current set of claims as set forth in this Amendment either does not involve or overcomes any such objections.

### **Claim Rejections - 35 USC 101**

Paragraph 4 of the Office Action rejects claims 1-5, 7 and 11 are rejected under 35 U.S.C. Section 101 on the basis that the claims lack the term "isolated" or "purified". Applicants believe the current set of claims as set forth in this Amendment either does not involve or overcomes any such rejections.

### **Claim Rejections 35 USC 112, first paragraph**

Paragraph 5 of the Office Action rejects Claims 1-5, 14-30, 65 and 73-86 under 35 USC 112, first paragraph. Paragraph 6 of the Office Action rejects Claims 7 and 11 under the same section. Applicants believe the current set of claims as set forth in this Amendment either does not involve or overcomes any such rejections.

Paragraph 7 of the Office Action rejects Claim 18 on the basis that Deposit Requirements have not been fully met.

Claim 90 corresponds to cancelled Claim 18. With regard to Claim 90, applicants attach herewith as **Attachment A** the required deposition receipts.

The undersigned representative of Applicants hereby states and certifies that all restrictions on accessibility to said deposit will be irrevocably removed by Applicants upon the granting of the patent.

### **Claim Rejections - 35 USC Section 112, second paragraph**

Paragraphs 8-11 of the Office Action reject the specifically listed claims listed therein under the above referenced section of the United States Code. Applicants believe the current set of claims as set forth in this Amendment either does not involve or overcomes any such rejections. Specifically with regard to the pending claims, Paragraph 11 of the Office Action

involved in the biosynthesis of spinosyn" was indefinite as it was not clear as to what are these nucleic acids while their nucleotide sequences are not indicated. While Applicants reserve the right to traverse that rejection, nonetheless to remove issues from the case and advance its prosecution, the pending claims as amended are believed to have overcome that rejection.

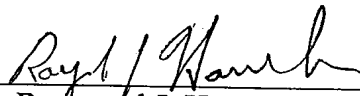
**Claim Rejections - 35 USC Section 102**

Paragraph 12 rejects the claims over Baltz et al. Applicants traverse that rejection for the reasons of record. Furthermore, Applicants believe the current set of claims as set forth in this Amendment overcomes such a rejection. As stated before, Applicants point out to the Examiner that Baltz does not envisage the heterologous expression of the gene cluster in an organism other than *S. Spinosa*. Therefore, vectors containing very large parts of the gene cluster for transferring the whole cluster into a host organism, and a host organism containing such vectors are not novel and not obvious in light of Baltz.

Allowance of the pending claims are respectfully requested.

Respectfully submitted,

By



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**ATTACHMENT A**

Six pages comprising three pairs of International Forms DSMZ-BP/4 and DSMZ-BP/9 each for DSM 13010, 13011 and 13012.


BUDAPEST TREATY ON THE INTERNATIONAL  
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS  
FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

Bayer AG

D-51368 Lverkusen

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT  
issued pursuant to Rule 7.1 by the  
INTERNATIONAL DEPOSITARY AUTHORITY  
identified at the bottom of this page

I. IDENTIFICATION OF THE MICROORGANISM	
Identification reference given by the DEPOSITOR:  P11/G6	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY:  DSM 13010
II. SCIENTIFIC DESCRIPTION AND/OR PROPOSED TAXONOMIC DESIGNATION	
The microorganism identified under I. above was accompanied by:  <input checked="" type="checkbox"/> a scientific description <input checked="" type="checkbox"/> a proposed taxonomic designation  (Mark with a cross where applicable).	
III. RECEIPT AND ACCEPTANCE	
This International Depositary Authority accepts the microorganism identified under I. above, which was received by it on 1999-08-18 (Date of the original deposit) <sup>1</sup> .	
IV. RECEIPT OF REQUEST FOR CONVERSION	
The microorganism identified under I above was received by this International Depositary Authority on (date of original deposit) and a request to convert the original deposit to a deposit under the Budapest Treaty was received by it on (date of receipt of request for conversion).	
V. INTERNATIONAL DEPOSITARY AUTHORITY	
Name: DSMZ-DEUTSCHE SAMMLUNG VON MIKROORGANISMEN UND ZELLKULTUREN GmbH  Address: Mascheroder Weg 1b D-38124 Braunschweig	Signature(s) of person(s) having the power to represent the International Depositary Authority or of authorized official(s):    Date: 1999-08-20

<sup>1</sup> Where Rule 6.4 (d) applies, such date is the date on which the status of international depositary authority was acquired.

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Bayer AG

D-51368 Leverkusen

VIABILITY STATEMENT

issued pursuant to Rule 10.2 by the  
INTERNATIONAL DEPOSITARY AUTHORITY  
identified at the bottom of this page

<b>I. DEPOSITOR</b>	<b>II. IDENTIFICATION OF THE MICROORGANISM</b>
Name: Bayer AG Address: D-51368 Leverkusen	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY: DSM 13010  Date of the deposit or the transfer <sup>1</sup> : 1999-08-18
<b>III. VIABILITY STATEMENT</b>	
The viability of the microorganism identified under II above was tested on 1999-08-18 <sup>2</sup> . On that date, the said microorganism was  (X) <sup>3</sup> viable  ( ) <sup>3</sup> no longer viable	
<b>IV. CONDITIONS UNDER WHICH THE VIABILITY TEST HAS BEEN PERFORMED<sup>4</sup></b>	
<b>V. INTERNATIONAL DEPOSITARY AUTHORITY</b>	
Name: DSMZ-DEUTSCHE SAMMLUNG VON MIKROORGANISMEN UND ZELLKULTUREN GmbH  Address: Mascheroder Weg 1b D-38124 Braunschweig	Signature(s) of person(s) having the power to represent the International Depositary Authority or of authorized official(s):    Date: 1999-08-20

<sup>1</sup> Indicate the date of original deposit or, where a new deposit or a transfer has been made, the most recent relevant date (date of the new deposit or date of the transfer).

<sup>2</sup> In the cases referred to in Rule 10.2(a) (ii) and (iii), refer to the most recent viability test.

<sup>3</sup> Mark with a cross the applicable box.

<sup>4</sup> Fill in if the information has been requested and if the results of the test were negative.


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Identification reference given by the DEPOSITOR:  P11/B10	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY:  DSM 13011
II. SCIENTIFIC DESCRIPTION AND/OR PROPOSED TAXONOMIC DESIGNATION	
<p>The microorganism identified under I. above was accompanied by:</p> <p><input checked="" type="checkbox"/> (X) a scientific description <input checked="" type="checkbox"/> (X) a proposed taxonomic designation</p> <p>(Mark with a cross where applicable).</p>	
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V. INTERNATIONAL DEPOSITARY AUTHORITY	
Name: DSMZ-DEUTSCHE SAMMLUNG VON MIKROORGANISMEN UND ZELLKULTUREN GmbH  Address: Mascheroder Weg 1b D-38124 Braunschweig	Signature(s) of person(s) having the power to represent the International Depositary Authority or of authorized official(s):    Date: 1999-08-20

<sup>1</sup> Where Rule 6.4 (d) applies, such date is the date on which the status of international depositary authority was acquired.

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<b>I. DEPOSITOR</b>	<b>II. IDENTIFICATION OF THE MICROORGANISM</b>
Name: Bayer AG Address: D-51368 Lerkusen	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY: DSM 13011  Date of the deposit or the transfer <sup>1</sup> : 1999-08-18
<b>III. VIABILITY STATEMENT</b>	
The viability of the microorganism identified under II above was tested on 1999-08-18 <sup>2</sup> . On that date, the said microorganism was  <input checked="checked" type="checkbox"/> <sup>3</sup> viable  <input type="checkbox"/> <sup>3</sup> no longer viable	
<b>IV. CONDITIONS UNDER WHICH THE VIABILITY TEST HAS BEEN PERFORMED<sup>4</sup></b>	
<b>V. INTERNATIONAL DEPOSITARY AUTHORITY</b>	
Name: DSMZ-DEUTSCHE SAMMLUNG VON MIKROORGANISMEN UND ZELLKULTUREN GmbH  Address: Mascheroder Weg 1b D-38124 Braunschweig	Signature(s) of person(s) having the power to represent the International Depositary Authority or of authorized official(s):    Date: 1999-08-20

<sup>1</sup> Indicate the date of original deposit or, where a new deposit or a transfer has been made, the most recent relevant date (date of the new deposit or date of the transfer).

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I. IDENTIFICATION OF THE MICROORGANISM	
Identification reference given by the DEPOSITOR:  P8/G11	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY:  DSM 13012
II. SCIENTIFIC DESCRIPTION AND/OR PROPOSED TAXONOMIC DESIGNATION	
The microorganism identified under I. above was accompanied by:  <input checked="" type="checkbox"/> (X) a scientific description <input checked="" type="checkbox"/> (X) a proposed taxonomic designation  (Mark with a cross where applicable).	
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<sup>1</sup> Where Rule 6.4 (d) applies, such date is the date on which the status of international depositary authority was acquired.



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I. DEPOSITOR		II. IDENTIFICATION OF THE MICROORGANISM	
Name: Bayer AG Address: D-51368 Lerkusen		Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY: DSM 13012  Date of the deposit or the transfer <sup>1</sup> : 1999-08-18	
III. VIABILITY STATEMENT			
The viability of the microorganism identified under II above was tested on 1999-08-18 <sup>2</sup> . On that date, the said microorganism was  <input checked="" type="checkbox"/> <sup>3</sup> viable  <input type="checkbox"/> <sup>3</sup> no longer viable			
IV. CONDITIONS UNDER WHICH THE VIABILITY TEST HAS BEEN PERFORMED <sup>4</sup>			
V. INTERNATIONAL DEPOSITARY AUTHORITY			
Name: DSMZ-DEUTSCHE SAMMLUNG VON MIKROORGANISMEN UND ZELLKULTUREN GmbH  Address: Mascheroder Weg 1b D-38124 Braunschweig		Signature(s) of person(s) having the power to represent the International Depositary Authority or of authorized official(s):  <i>V. Weiss</i>  Date: 1999-08-20	

<sup>1</sup> Indicate the date of original deposit or, where a new deposit or a transfer has been made, the most recent relevant date (date of the new deposit or date of the transfer).

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